

ENERGY POLICY AND CONSERVATION ACT (EPCA)

- The Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6292(a), is a federal law that establishes efficiency standards for consumer appliances.
- The statute contains a list of 19 consumer products that are considered covered products for which the U.S. Secretary of Energy is authorized to establish energy conservation standards.
- EPCA also allows the Department of Energy to classify other types of consumer products as covered products if the DOE determines that:
 - Classifying the products as covered products is necessary or appropriate to carry out the purposes of EPCA; and
 - The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours per year. 42 U.S.C § 6292(b)(1).

*CALIFORNIA RESTAURANT ASSOCIATION v.
CITY OF BERKELEY, 65 F.4TH 1045 (2023)*

- In April 2023, a panel of the Ninth Circuit Court of Appeals invalidated a Berkeley ordinance prohibiting the extension of natural gas pipes in new buildings under EPCA's preemption rule, 42 U.S.C. § 6297(c).
- The Court ruled that EPCA “preempts regulations that relate to the quantity of [natural gas] directly consumed by certain consumer appliances at the place where those products are used.” 65 F. 4th 1050-51.

EPCA BUILDING CODE EXEMPTION

Under EPCA, building codes are exempt from the preemption rule if they meet seven specified requirements. 42 U.S.C. § 6297(f)(3).

A. The building code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

B. The building code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established by the DOE.

EPCA BUILDING CODE EXEMPTION (CONT.)

C. The credit to the energy consumption or conservation objective allowed by the building code for installing covered products having energy efficiencies exceeding the energy conservation standard established by the DOE is on a one-for-one equivalent energy use or equivalent cost basis.

D. If the building code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established by the DOE, the baseline building designs are based on the efficiency level for the covered product which meets but does not exceed DOE's standard.

EPCA BUILDING CODE EXEMPTION (CONT.)

E. If the building code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in criteria D., there also must be at least one combination which includes such covered product the efficiency of which does not exceed the standard or level by more than 5%, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

F. The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

EPCA BUILDING CODE EXEMPTION (CONT.)

G. The estimated energy use of any covered product permitted or required in the building code, or used in calculating the objective, is determined using the applicable test procedures prescribed under EPCA, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable EPCA appliance test procedures or other technically accurate documented procedure.